

CHAPTER THREE

CLASSIFICATION OF PRIORITY CASES

In all three of the media there are certain enforcement cases that are of such environmental significance that they are treated on a more involved level. These cases are classified as such based upon EPA requirements and guidance. Because of their status, they are tracked by special tracking systems, which are discussed below. Throughout this Manual, these special cases are referred to as “Priority Cases.”

I. AIR PROGRAM PRIORITY CASE CLASSIFICATION

On December 22, 1998, EPA established guidance called “Issuance of Policy on the Timely and Appropriate (“T&A”) Enforcement Response to High Priority Violations” (“HPVs”). This guidance identifies the highest priority violations for the Air Program, and provides a special tracking system for resolving those suspected violations. DEQ is obligated through its Section 105 Grant commitments to implement the HPV Policy in the Commonwealth. The Department prefers that its staff serve as the lead enforcement agency. Conformity with the HPV Policy, however, does not preclude EPA intervention in any enforcement activity against suspected noncomplying sources, including those that do not meet HPV criteria.

A. HIGH PRIORITY VIOLATIONS CRITERIA

In its Policy, EPA defines “HPVs” as those sources that are environmentally most important and establishes criteria for HPV status. The criteria apply to the pollutant(s) of concern at major sources, (*i.e.*, pollutant for which source is major) except where the criterion itself indicates otherwise (*e.g.*, applies to a synthetic minor source). The determination of what is substantive or substantial shall be part of a case-by-case analysis/decision by EPA and the delegated agency.

The following criteria trigger HPV status:

- Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.
- Violation of an air toxics requirement (*i.e.*, NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions.
- Violation by a synthetic minor of an emission limit or permit condition that affects the source’s PSD, NSR or Title V status (*i.e.*, fails to comply with permit restrictions that limit the source’s potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source’s actual emissions to exceed the NSR/PSD/Title V thresholds.).

- Violation of any substantive term of any local, state or federal order, consent decree or administrative order.
- Substantial violation of the source's Title V certification obligations (*e.g.*, failure to submit a certification).
- Substantial violation of the source's obligation to submit a Title V permit application (*i.e.*, failure to submit a permit application within 60 days of the applicable deadline).
- Violations that involve testing, monitoring, record keeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.
- A violation of an allowable emission limit detected during a reference method stack test.
- Clean Air Act violations by chronic or recalcitrant violators. Chronic or recalcitrant violator refers to a source that may stay below the HPV threshold but continually violates requirements to the extent that it is mutually agreed by EPA and the delegated agency that the source should be bumped up into HPV status.
- Substantial violation of Clean Air Act § 112 (r) requirements (for permitting authorities that are not implementing agencies under § 112 (r) program, limited to source's failure to submit Section 112 (r) risk management plan).

B. INSTRUCTIONS FOR PROCESSING A HIGH PRIORITY VIOLATION

1. Inspector's Responsibility

It is the inspector's responsibility to do the following when processing an HPV:

- Know the HPV Policy.
- Know the schedule requirements.
- Initiate activities as necessary to meet the schedule.
- Track source obligations.
- Ensure that the Air Compliance Manager is kept informed of potential schedule problems.
- If, at any time during the process, it becomes apparent that the alleged violation will not be resolved administratively (*e.g.*, through consent order), this information will be conveyed to the Air Compliance Manager as soon as possible.

2. Time Schedule for Processing HPVs

EPA Policy requires the following time schedule for processing HPVs:

Day 0

The clock starts (*i.e.*, day zero) no later than 45 days after the discovering agency first receives information concerning a federally enforceable violation (*e.g.*, date of inspection, stack test or continuous emission monitoring system report). If, during this 45-day period, the enforcement agency decides that additional monitoring or analysis is required to determine or confirm the violation, the clock does not start until the earlier of the date of receipt of such additional data or on the 90th day after the violation was initially discovered. This additional period (up to 45 days) provides sufficient time for agency evaluation of the data to determine if it is a federally enforceable violation.

Day 60

Unless DEQ requests that EPA issue the notice, by Day 60 DEQ shall routinely issue an NOV (if required for SIP sources) or an EPA Finding of Violation (“FOV”) (for non-SIP sources) to the source. If DEQ has not done so, EPA’s Policy requires it to immediately issue an appropriate notice.

- An EPA-issued NOV or FOV in a State-lead case means EPA still expects the State to resolve the matter, and further EPA action will be required only in the absence of an acceptable prompt resolution by the State.
- The issuing office will transmit copies of NOV’s or FOV’s it issues to other agencies in whose jurisdiction the source is located. If the alleged violation clearly impacts upon the air quality of an adjacent state, EPA will also transmit a copy of the NOV or FOV to that state as well.
- EPA will also add this source to its list of HPVs for Agency tracking and reporting purposes.

Day 150

If DEQ has the initial lead and the case has not been resolved or addressed by Day 150, EPA and DEQ will consult about the overall case strategy and discuss effective means for expeditiously addressing or resolving the case. Possible strategies could include continued deferral to DEQ, EPA assumption of the case, or continuation of the case in a work-sharing arrangement between EPA and DEQ.

EPA Responsibilities After It Assumes the Lead

If it assumes the lead in a case, EPA will have up to an additional 150 days to (1) get the source into compliance or on a compliance schedule, (2) issue a § 113(a) administrative order (including administrative remedies), (3) issue a § 113(d)

administrative enforcement action, (4) or subject the source to a § 120 action or judicial referral. EPA encourages continued state participation even in situations where EPA takes over the lead. The possibility of a joint action should be considered as an alternative to a unilateral EPA action where feasible.

Day 270 (no lead change) or Day 300 (lead change)

By Day 270 (or Day 300 with lead change) the source shall either be RESOLVED or ADDRESSED, *i.e.*, subject to a legally-enforceable and expeditious administrative or judicial order or be subject to a referral to the Attorney General's Office or the Department of Justice. In some complex cases, more time may be required. If a case will require additional time, DEQ and EPA will discuss a case's complexity as soon as those factors are determined.

3. Emergency Episodes; Construction Without a Valid Permit

With respect to emergency episodes or sources that construct without a valid PSD or Part D permit (where one is required), the time lines delineated above do not apply. In the case of emergency episodes, the seriousness of the violation would normally require expedited action. In the case of a source constructed without a required PSD or Part D permit, options for obtaining relief may be foreclosed by allowing the source to continue to construct and, therefore, expedited action may be essential.

II. WASTE PROGRAM PRIORITY CASE CLASSIFICATION

A. SOLID WASTE PROGRAM

Because of the minimal nature of federal enforcement presence, there is no federal formal classification of suspected noncompliance in the Solid Waste Program. DEQ addresses suspected violations of the Solid Waste Program in the manner set forth in Chapter One.

B. HAZARDOUS WASTE PROGRAM

Because Virginia has been granted EPA authorization, DEQ uses EPA's Hazardous Waste Civil Enforcement Response Policy (Mar. 15, 1996) to classify suspected hazardous waste violations for the purpose of determining a timely and appropriate enforcement response. The March 1996 Policy classifies alleged noncompliers based upon an analysis of the facility's overall compliance with Subtitle C of RCRA – not on an individual violation basis – which includes prior recalcitrant behavior or a history of noncompliance.

The Policy establishes two classifications of violators: Significant Noncompliers ("SNC") and Secondary Violators ("SV"). Examples of these classifications are provided below. In this Manual,

only SNCs are Priority Cases; SVs are not. SVs are addressed here in keeping with EPA's March 16, 1996 Policy and to clarify the distinctions between the two classifications.

1. Inspector's Responsibility

It is the inspector's responsible to do the following when processing a hazardous waste case:

- Know the EPA March 16, 1996 Policy.
- Know the schedule requirements.
- Initiate activities as necessary to meet the schedule.
- Track source obligations.
- Ensure that the appropriate Manager is kept informed of potential schedule problems.
- If, at any time during the process, it becomes apparent that the alleged violation will not be resolved administratively (*e.g.*, through consent order), this information will be conveyed to the appropriate Manager as soon as possible.

2. Significant Noncompliers

SNC Priority Cases are those facilities that:

- have caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous waste constituents;
- are chronic or recalcitrant violators;
- have deviated substantially from the terms of a permit, order, agreement or from RCRA statutory or regulatory requirements; or
- for which corrective actions cannot be completed within 90 days of the evaluation date.

The actual or substantial likelihood of exposure should be evaluated using facility specific environmental and exposure information whenever possible. This may include evaluating potential exposure pathways and the mobility and toxicity of the hazardous waste being managed. It should be noted, however, that environmental impact alone is sufficient to cause a facility to be SNC, particularly when the environmental media affected require special protection (*e.g.*, wetlands or sources of underground drinking water). While facilities should be evaluated on a multi-media basis, a facility may be found to be a chronic or recalcitrant violator based solely on prior RCRA violations and behavior.

3. Secondary Violators

SVs – which are not Priority Cases – are suspected violators that do not meet the criteria listed above for SNCs. SVs are typically first time violators and/or violators that pose no actual threat or a low potential threat of exposure to hazardous waste or constituents. A facility classified as an SV should not have a history of recalcitrant or non-compliant conduct. Suspected violations associated with an SV

should be of a nature to permit prompt return to compliance with all applicable rules and regulations within 90 days of the evaluation date.

4. Violation Classification Examples

The following examples are designed to assist in classifying the status of facilities that are suspected of being in violation of applicable federal or Virginia requirements. The following examples are not intended to encompass all potential violation characteristics. The Regional Offices with the assistance of OEC, as needed, make the final determination of an individual facility's designation. The violation classification examples are presented based upon the characteristics associated with the specific facility classifications (SNC and SV).

- Failure to carry out waste analysis for a waste stream (SNC). If subsequent waste analysis indicates that the stream is not a hazardous waste, the appropriate classification is SV.
- Operating without a permit or interim status (SNC).
- Failure to comply with 90 day storage limit by a generator (SV). Significant deviation from the requirement or failure to rectify the violation upon notice elevates facility to SNC.
- Commencing construction prior to permit approval at a new facility or modifications to an existing facility requiring a permit before such construction is commenced (SNC).
- Systematic failure of a generator or transporter to comply with the manifest system or substantial deviation from manifest requirements (SNC). More routine manifest violations of a limited nature may not require SNC designation.
- Failure to satisfy manifest discrepancy reporting requirements (SNC).
- Failure to prevent the unknowing entry or prevent the possibility of unauthorized entry of persons or livestock into the waste management area of the facility. A SNC designation is appropriate when such failure substantially increases the potential for harm to the health of humans or livestock (SNC).
- Failure to properly handle ignitable, reactive, or incompatible wastes (SNC).
- Disposal of hazardous waste by a waste handler in a regulated quantity at a non-regulated treatment, storage, and disposal facility ("TSDF") (SNC).
- Improper or unpermitted disposal of waste in violation of the land-disposal restrictions (SNC).
- Mixing, solidifying, or otherwise diluting waste to circumvent land-disposal restrictions (SNC).
- Incorrectly certifying a waste for disposal/treatment in violation of the land-disposal restrictions (SNC).
- Failure to submit notifications/certifications as required by land-disposal restrictions (SNC).

- Failure of an owner/operator of a TSDF to have a closure or post closure plan or cost estimates (SNC).
- Failure to maintain a copy of the closure plan or financial assurance documentation onsite at the facility when it is maintained at the corporate headquarters and/or regional corporate office (SV). Absence of documentation or failure to supply documentation upon request would be a SNC designation.
- Minor deviations from the schedule set out for facility closure (SV).
- Major deviations from the schedule set out for facility closure (SNC).
- Failure of the owner/operator to retain a professional engineer to oversee closure activities and certify conformance with the closure plan (SNC).
- Failure to establish or maintain financial assurance for closure and/or post-closure care (SNC).
- Failure to submit a biennial report (SV). A facility's repeated failure to submit the report may be considered recalcitrant behavior and warrant an SNC classification.
- Failure to conduct required inspection or correct hazardous conditions detected during a generator inspection (SNC).
- Failure to follow emergency procedures contained in the response plan which could result in serious harm. Failure to conduct the following types of activities during an emergency would be cause for a SNC designation. Response activities include: activating alarm and/or notifying appropriate emergency officials; reporting findings of spills outside a facility; containing hazardous waste; monitoring any shut-down operations; properly treating, storing, and disposing of the spill materials; and cleaning up completely after an accident (SNC).
- Storage of hazardous waste in a container which is in poor condition, substantially increasing exposure or potential exposure to human health and the environment (SNC).
- A general failure to follow drum labeling requirements or a lack of knowledge of the contents of the drum (SNC).
- Failure to date containers/tanks with an accumulation date. (SNC) In an instance of a first violation, if records document an accumulation date, the facility should get an SV designation.
- Deviation from or failure to perform in accordance with a required compliance schedule (SNC).

5. Time Schedule for Processing SNCs/SVs

Appropriate enforcement actions are divided into two categories, tied to the two levels of violations. An informal enforcement response is the minimally appropriate enforcement response for all

Secondary Violators. Formal enforcement actions are the minimally appropriate enforcement response for all Significant Noncompliers.

An informal enforcement response typically consists of a Warning Letter containing a recitation of the violations and a schedule for returning the facility to full compliance with all substantive and procedural requirements of applicable regulations, permits, and statutes within 90 days. A facility that fails to return to compliance in accordance with the informal action should be reclassified as a SNC and a new evaluation date established.

A formal enforcement response must mandate compliance and initiate a civil, criminal, or administrative process that results in an enforceable agreement or order. The formal enforcement response should also seek injunctive relief that ensures the non-compliant facility expeditiously returns to full physical compliance.

Resolution of informal and formal enforcement actions must occur within the restraints of the following timeline.

Day 0 C Evaluation Date

The evaluation date is defined as the first day of any inspection or record review during which a violation is identified, regardless of the duration of the inspection or the stage in the inspection at which the violation is identified. For violations detected through some method other than record reviews or inspection, the evaluation date will be the date upon which the information (e.g., self-reporting violators) becomes available.

If a facility is reclassified as a SNC because of a violation of an informal enforcement response, for the purposes of timeline tracking, the new evaluation date will be considered the first day of discovery of non-compliance with the compliance schedule established through the informal enforcement response.

Day 90

Typically, informal enforcement responses are initiated much sooner than 90 days after the Evaluation Date. In all cases, however, this determination must be made and the informal response must be issued within 90 days of the evaluation date.

Formal enforcement responses must be initiated by the issuance of a NOV by no later than 90 days after the evaluation date.

Day 180

Informal enforcement responses must result in a return to compliance by day 180. If not, the facility shall be reclassified as a SNC and a second evaluation date established. The second evaluation date will be considered the first day of discovery of noncompliance with the compliance schedule established by the informal enforcement

response but in no case shall the new evaluation date be established later than 180 days following the initial evaluation date.

For formal enforcement responses, where appropriate, a Unilateral Order (1186 Order) shall be issued within 180 days of the evaluation date.

Day 210

For cases which are determined appropriate for judicial action, the case must be referred to the Attorney General's Office within 210 days of the evaluation date.

Day 300

For cases deemed appropriate for an administrative enforcement response, a Consent Order (CO), or in cases involving State Facilities, an Executive Compliance Agreement (ECA) must be entered into within 300 days of the evaluation date.

III. WATER PROGRAM PRIORITY CASE CLASSIFICATION

By policy, EPA has established its water enforcement priorities as the following: (a) to ensure that adverse impacts on human health and the environment are prevented and (b) to assure a level playing field with penalties which recapture the economic benefits of noncompliance. With these priorities in mind, EPA oversees the Water Program by tracking all Major permittees and Minor permittees of particular interest. Pursuant to EPA's "Timely and Appropriate" ("T&A") policy, noncompliance should be addressed preferably within three months. EPA acknowledges, however, that six to eight months may be necessary to finalize the action where complex injunctive relief is required.

DEQ is obligated through its Section 106 Grant commitments to implement the T&A Guidance in the Commonwealth. While the Department prefers to serve as the lead enforcement agency, conformance with the T&A Guidance does not preclude EPA intervention in any enforcement activity against suspected noncomplying sources, including those which do not meet the Significant Noncompliance criteria.

EPA guidance states:

[A] rebuttable presumption will exist that EPA will move independently to address special emphasis violators if it appears that the State is unable to appropriately address the violation (including the collection of appropriate penalties....). EPA may move independently to address significant violators if it appears that the State is unable to timely resolve the significant violator, or if EPA discovers the State was aware of the violation but failed to report the violation to EPA as required.

A. SIGNIFICANT NONCOMPLIANCE

EPA has developed criteria for acting upon violations at Major facilities that define such violations as SNC. SNC violations are a subset of those instances of noncompliance which are to be reported as “reportable noncompliance by a major facility” under § 123.45, Title 40, Code of Federal Regulations. EPA defines “Reportable Noncompliance by a Major Facility” as those violations that can result in the facility being listed as SNC on the QNCR. See Chapter Two regarding EPA reporting.

According to EPA guidance for Timely and Appropriate enforcement actions, reportable noncompliance found on Major Facilities are “Significant Noncompliance” if they meet one or more of the following criteria:

- Missing a major compliance schedule milestone in a permit (start construction, end construction, meet final limits) by 90 days or more.
- Chronic Review Criteria: Four monthly average effluent permit violations (same pipe, same parameter) of ANY magnitude in a six month period.
- Technical Review Criteria: Two monthly average effluent permit violations (same pipe, same parameter) in two successive quarters (1.4 times the limit for a conventional pollutant¹ or 1.2 times the limit for a toxic pollutant²).
- Effluent violations of non-monthly average limits per Technical and Chronic Review Criteria (monthly average must also be violated to some degree).
- Failure to provide a compliance schedule report for final compliance from a permit or order schedule.
- Failure to provide a discharge monitoring report (30 days past due).
- Failure to implement an approved pretreatment program (i.e., failure to issue permits to industrial users [IUs], failure to inspect or sample IUs, failure to enforce against violating IUs).
- Any violation of a judicial decree.
- Any violation or pattern of violations which are appropriate for SNC designation (chronic overflows, chronic bypasses, fishkill, etc.) based on human health or environmental impact.
- Any violations of an interim limit in a consent or judicial order.

¹SNC conventional pollutants: Oxygen Demand (including BOD, COD, TOD, TOC), Solids (including TSS, TDS), Nutrients (including Inorganic Phosphorus Compounds, Inorganic Nitrogen Compounds), Detergents, and Oils (including MBAs, NTA, oil and grease, other detergents or algicides), Minerals (calcium, chloride, fluoride, magnesium, sodium, potassium, sulfur, sulfate, total alkalinity, total hardness, other minerals), and Metals (aluminum, cobalt, iron and vanadium).

²SNC Toxic Pollutants: Metals (all forms, including those not specifically listed as conventional pollutants), Inorganic (cyanide, total residual chlorine), Organics (all Organics, excluding those specifically listed as conventional pollutants).

- Missing a major compliance schedule milestone in an order by 30 days or more.

B. SPECIAL EMPHASIS VIOLATORS

In addition to SNC, there are other cases which need to be brought into compliance as expeditiously as possible. These special concern violators are termed “Special Emphasis Violators” and are defined by EPA to be:

- In programs not delegated to the state (*e.g.*, the sludge program), all SNC violations, including SNC-type violations of minor facilities.
- Any violation that impacts or has the potential to impact human health or the environment (majors or minors).
- Any violations uncovered as a result of investigation of citizen complaints or citizen suit notices under Section 505 of the Clean Water Act (majors or minors).
- Any violations referred to EPA for enforcement by DEQ.
- Instances where the DEQ has failed to recoup significant economic benefit (majors and minors).

C. EXCEPTIONS LIST

EPA’s T&A policy states that SNC violations be addressed within one quarter of their occurrence. Rigid compliance with this policy, however, may result in hasty action that does not lead to a desired long-term solution. As a result, EPA developed an “Exceptions List” process.

The “Exceptions List” is a report which identifies Major water program permittees that are in SNC for two consecutive quarters. Any Major permittee listed on the QNCR for two consecutive quarters for the same instance of SNC (*e.g.*, same pipe, same parameter for effluent violations; same milestone for schedule violations; same report for reporting violations; and same requirement for "other" violations) must be listed on the Exceptions List unless the facility was addressed with a formal enforcement action prior to the completion date of the second QNCR.

DEQ’s goal is to address alleged violations before they become SNC.

D. COMPLIANCE AUDITING SYSTEM

The Water Compliance Auditing System (“CAS”) catalogues different violations by subjecting them to point assessment criteria. The point assessment criteria are uniformly applied with higher values given to violations of greater environmental consequence. Chronic violations also receive higher point assessments. The Point Assessment Criteria follows at the end of this Chapter.

Each violation of enforceable documents, state laws, and state regulations may receive points or fractions of points. Where multiple point values are shown in the Point Assessment Criteria (*e.g.*, .5, .5,

1, 2), the first value (.5) is assigned for the first violation in a given six-month period, the second value (.5) is assigned for the second violation in the same period, the third value (1) is assigned for the third violation in the same period, etc. Where the same violation is continuing, such as not meeting a compliance schedule date, the first value is generally assigned in the same month as the missed due date, and succeeding values assigned in one-month periods after the first. For effluent violations this applies only to the same parameter at the same pipe. For schedule milestones and report due dates, each month overdue results in additional or increased point assessment.

The points will be accumulated over a six-month period. Points obtained in the first month of any six-month period shall be deleted at the beginning of the next month following that six-month period. Facilities that are required to submit DMR's less frequently than once per month, but more frequently than once per year, shall be evaluated at the end of each reporting period to determine accumulated violation points. The graduated-point scale will be applied to these DMR's the same as for monthly reports, except on rolling periods consisting of six reports. DMR's will be reviewed, and data entered into the record, for facilities reporting only once per year. Points will be assigned for DMR violations, but the graduated point escalation system will not be used. Only the minimum points will be assigned for each violation, but points will also accrue for other violations as appropriate, and enforcement referral will occur if four points are received in a six-month period.

For non-VPDES facilities which are required to submit monitoring reports, tracking and reported violations will be assessed according to guidelines specified for VPDES permit violations insofar as possible. Tracking of their reports is necessary to determine potential environmental impact and subsequent remedial and enforcement action.

Those violators which accumulate less than four points shall be evaluated by the regional office and appropriate compliance assistance shall be offered. Generally, violators – including Majors – that accumulate at least one point but no more than 3.9 points during any six-month period shall receive a Warning Letter. All violators who receive four or more points in a six-month period shall be issued a Notice of Violation.

For the purpose of managing point assessments in the enforcement referral process, the following will apply :

- Majors - In a given month, the total points that can accrue for a Major facility will be the greater of the highest number of points for a single violation, or two points.
- Minors - In a given month, the total points that can accrue for a Minor facility will be the greater of the highest number of points for a single violation, or one point.

Points may be excused by the Compliance and Enforcement Manager, for infrequent violations and noncompliance where the permittee/owner has demonstrated to the satisfaction of the staff that such occurrence or noncompliance was due to an upset as defined by the Board's Permit Regulation (for violations of technology-based limits only), was not due to a lack of proper operation and maintenance, or was caused by earthquake, flood, or other acts of God.

When a permit is modified to reflect a change in ownership, all accumulated points are automatically voided. However, this voidance of points will not apply if the previous owner has already

undergone enforcement action or if the modification only reflects a name change or an attempt to hide behind a parent corporation.

Once an Owner has signed a Consent Order and DEQ has received the original signed document, new NOV's will no longer be issued for violations addressed by the order. This applies to past violations for which NOV's have not been issued yet and for future violations. However, points for past violations will remain on the books, and points for future violations will accrue until the enforcement action becomes effective. Issuance of an Emergency Special Order does not qualify for avoidance of points. In the case of Special Orders issued after a hearing, points shall not be voided and shall continue to accrue for the original violation. Issuance of NOV's shall stop, however, as long as there is compliance with the Special Order.

Where a facility is under an enforcement action to eliminate certain violations and is demonstrating satisfactory progress under the action, points may be excused by the Compliance and Enforcement Manager for the violations the enforcement action was designed to correct.

POINT ASSESSMENT CRITERIA

Points assessed using these Point Assessment Criteria are used as a management-ranking tool to determine the best use of costly resources. Points are assigned when there is evidence that a violation has occurred, but the assignment of points and/or issuance of Warning Letters (WLs) (issued between cumulative, rounded point assessments of 1 and 3) or Notices of Violation (NOVs) (issued when point assessment reaches 4 cumulative, rounded points) are neither agency determinations (i.e., case decisions) nor adjudications. The purpose of the WL and the NOV is to advise that the Board may consider taking or seeking action, and that the facts therein could provide a basis for civil proceedings under Code ' ' 62.1-44.15(8), 62.1-44.23, 62.1-44.32(a), 62.1-44.34:20 and 10.1-1186(10), or others. Further evaluations are made to determine if and when a violation has occurred and that an enforcement action should be initiated.

VIOLATION DESCRIPTION	POINTS ASSESSED
1) PERMIT VIOLATIONS	
a) VPDES (including General Permits)	
i) Effluent Limits	
(1) Toxic Parameters (Except Cl ₂ and ammonia)	
(a) Value equal or greater than 1.2 x Limit	
Major	2
Minor	1
(b) Value less than 1.2 x Limit	
Major .....	.5, .5, 1, 2
Minor .....	.2, .2, .5, 1
(c) WET	2
(2) Nontoxic Parameters (including ammonia)	
(a) Value equal or greater than 1.4 x Limit	
Major	2
Minor	1
(b) Value less than 1.4 x Limit	
Major .....	.5, .5, 1, 2
Minor .....	.2, .2, .5, 1
(3) Dissolved Oxygen, pH, Temperature, All Exceptions, Except Cl ₂ (Major and minor)	
(a) Value less or equal to 0.8 x minimum limit .....	.5, .5, 1, 2
(b) Value greater or equal to 1.2 x maximum limit .....	.5, .5, 1, 2
(c) Value less than 1.2 x maximum limit .....	.2, .2, .5, 1
(d) Value greater than 0.8 x minimum limit .....	.2, .2, .5, 1
(4) Chlorine	
(a) Cl ₂ -Inst. Resid. Tech. Max and Inst. Min. Tech Limit (Parameters 166 and 213)	
Major	1
Minor .....	.5
(b) All Other Cl ₂ Including Exceptions (Major & Minor)	
(i) Value less than or equal to 0.8 x minimum limit .....	.5, .5, 1, 2
(ii) Value greater or equal to 1.2 x maximum limit .....	.5, .5, 1, 2
(iii) Value less than 1.2 x maximum limit .....	.2, .2, .5, 1
(iv) Value greater than 0.8 x minimum limit .....	.2, .2, .5, 1
(5) Quarterly Reporting	
Major	1, 1, 2
Minor	1
ii) Pretreatment Violations	
Major	1, 1, 2

Minor	1
iii) Toxics Monitoring Program (Major and minor)	
(1) Failure to report under TMP/TRE	1, 1, 2
(2) Inadequate reporting under TMP/TRE, 1st submittal	1, 1, 2
(3) Inadequate reporting under TMP/TRE, subsequent submittals	1, 1, 2
iv) Unsatisfactory Inspection (Major and minor)	
(1) Overall unsatisfactory rating .....	.5, 1, 1, 2
(2) Overall unsatisfactory rating with evidence of falsification	4
v) Bypasses and Overflows (through permanent outfalls, points assessed per discharge, per day) (Major and minor)	
(1) Unreported	2
(2) Reported .....	.2, .2, .5, 1
b) VPDES and VPA	
i) Compliance schedules/due dates	
Major	1, 1, 2
Minor	1, 1, 2
ii) Late DMR/monitoring report (Major and minor) (Received after 10th of month, but not if postmarked by U. S. Post Office by 10th of month or documented received on 10th of month by commercial courier for delivery) .....	.5, 1
iii) No DMR/monitoring report (Not received in month due) and deficient DMR/monitoring report (Omissions or errors so great as to prohibit a determination of compliance or 25 percent of values missing) Major	2
Minor	1
iv) Incomplete DMR (Normally less than 25 per cent of required parameter values missing) (Maximum points per DMR/monitoring report)	1
v) Improper DMR/monitoring report (Major and minor) (.2 total points per DMR/monitoring report to be assessed regardless of improper items) .....	.2
<i>Examples of Improper DMR/Monitoring Report Violations:</i>	
• No signature, no date, or no telephone number.	
• Number(s) and/or decimal point illegible.	
• Typographical or data entry error.	
• DMR submitted on outdated form.	
• Monitoring period not entered.	
• Sample type or sample frequency not complete or incorrect.	
• Letter of Explanation for violations not received.	
• Letter of Explanation for violations not adequate.	
vi) Application Process Violations (Major/minor/no permit)	
(1) Failure to (Re)Apply in Timely Manner	1, 1, 2
(2) Improper or incomplete application/reapplication .....	.1, 1, 2
(3) Construction/modification of facilities without application (New or existing)	1, 1, 2
vii) Minor violations (Other than any of above)	
(1) Violation without adverse environmental impact .....	.5
(2) Failure to Correct Minor No-Impact Violation	1
<i>(Examples: failure to submit O/M manual; failure to operate in accordance with O/M manual; violation of CTO condition)</i>	
c) VPA and Land Application	
i) Adverse environmental impact, or presenting an imminent and substantial danger	4
ii) Violation which causes discharge to state waters	1, 3
iii) Violation With No Discharge to State Waters .....	.5
iv) Failure to submit complete, original application	1, 1, 2
v) Application Process Violations	
(1) Failure to (Re)Apply in Timely Manner	1, 1, 2
(2) Improper or incomplete application/reapplication .....	.1, 1, 2

(3) Construction/modification of facilities without application (New or existing)	1, 1, 2
d) Virginia Water Protection Permit Program (VWPP)	
i) Any violation causing major adverse environmental impact, including but not limited to fish kills or loss of other beneficial uses	4
ii) Improper or incomplete application	1, 1, 2
iii) Unpermitted activity, without major adverse environmental impact	2
iv) Noncompliance with water protection permit without major adverse environmental impact	2
v) All other violations	1, 1, 2
e) Groundwater withdrawal permit violations	
i) Violation of annual withdrawal limit	2
ii) Violation of monthly withdrawal limit	1
iii) Withdrawal without permit or certificate	1
iv) Violation of permit or certificate conditions	1
v) Failure to comply with/correct any standard or special conditions other than limits	1
vi) Failure to mitigate adverse impacts of withdrawal as required by mitigation plan	4
2) ENFORCEMENT ACTION VIOLATIONS	
a) Judicial actions, all violations (Major and minor)	4
b) Administrative actions	
i) Special Orders	
(1) Failure to pay civil charge in accordance with consent order (major and minor)	4
(2) Compliance schedules/due dates (except routine progress reports)	
(a) Majors	2
(b) Minors	1, 1, 2
(3) Progress reports (Not including study, sample data submittal) (Major and minor) .....	.1
(4) Effluent limits less stringent than permit	
(a) Major	4
(b) Minor	2
(5) Effluent limits equal to or more stringent than permit (same as points for permit violations)	
3) PETROLEUM STATUTE VIOLATIONS	
a) Underground oil storage tank (Article 9: UST and LUST) program violations	
i) No adverse environmental impact .....	.5, .5, 1
ii) Potential adverse environmental impact	1
iii) Adverse environmental impact or presenting an imminent and substantial danger	4
iv) Failure to report a release or suspected release	4
b) Aboveground OII storage tank (Article 11: AST and LAST) violations	
i) Failure to submit Contingency Plan, or operation without approved Contingency Plan	1
ii) Failure to respond in 30 days after violator is notified by OSRR of inadequate Contingency Plan (1st point on 1st day late)	1, 1, 2
iii) Failure to demonstrate financial responsibility	1, 1, 2
iv) Failure to maintain on-site facility records	1, 1, 2
v) Failure to operate in accordance with approved Contingency Plan	1, 1, 2
vi) Reportable oil spill with no approved Contingency Plan, or inadequate response to oil spill	4
vii) Failure to remediate	2, 2
c) Tank Vessels (Article 11)	
i) All violations	4
d) Oil Discharge Violations (Article 11)	
i) Discharge or Release of Oil Resulting in Environmental Damage or Loss of Beneficial Uses (If there is a clear responsible party)	4
ii) Failure to immediately report discharge of oil that reaches, or that may reasonably be expected to reach, state waters, state lands or storm drains	4
4) OTHER VIOLATIONS	
a) Spills into state waters and discharge to state waters not authorized by permit	

i) Adverse environmental impact, or presenting an imminent and substantial danger	4
ii) All other spills	
(1) Not Reported	4
(2) Reported	1
b) Refusal to reimburse for collectible cost recovery	2, 2
c) Violations of regulations and laws not stated above	Case by Case
5) AGGRAVATING FACTORS (not withstanding the above, any violation with following characteristics)	
a) Adverse environmental impact, loss of beneficial use, or presenting an imminent and substantial danger	4
b) Potential for adverse impact or loss of beneficial use	2
c) Violations resulting in exceedences of water quality standards violations	2
d) Suspected falsification	4
e) Suspected willful violation	4
f) Violation due to clear indifference	4
g) Any violation when the owner or operator is insolvent or bankrupt; where the facility is, or is about to be, abandoned; or when ownership of the facility is or is about to be transferred.	4
h) Site access violations	
i) Failure to provide reasonable access otherwise required by statute or permit to any facilities where there is adverse environmental impact or an imminent and substantial danger	4
ii) Other site access violations	1, 3

NOTES :

- “Adverse Environmental Impact” includes, but is not limited to, fish kills, loss of drinking water supply, or loss of other beneficial uses. Any allegation of adverse environmental impact due to spills, bypasses, unpermitted discharges, and other violations of state law and regulations shall be reported to the enforcement staff with documentation that shall conclude that either there was a resulting adverse environmental impact or there was no adverse environmental impact.
- “Industrial Major Facility” - Facilities which have been defined as significant on the basis of permitted effluent characteristics and receiving stream quality and which are redefined yearly by agreement between the Board and EPA.
- “Industrial Minor Facility” - Facility not on EPA's list of Major Industrial facilities.
- “Municipal Major Facility” - Any municipal treatment facilities with flow equal to or greater than 1.0 MGD, and which are redefined yearly by agreement between the Board and EPA.
- “Municipal Minor Facility” - Any municipal treatment facility with flow less than 1.0 MGD.